

UNITED DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

KIMBERLINE JOHNSON

Civil Action No.:

Plaintiff

V.

BODEGA LATINA CORPORATION  
D/B/A FIESTA MART, LLC.

Div. Juris 28 U.S.C. § 1332

Defendant

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**COMPLAINT FOR DAMAGES**

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**COMES NOW**, KIMBERLINE JOHNSON, Plaintiff who files this Original  
Complaint for Damages against,

BODEGA LATINA CORPORATION D/B/A FIESTA MART, LLC. and  
Defendant and shows this Court the following:

Statement of Subject Matter Jurisdiction

Plaintiff, KIMBERLINE JOHNSON is a person of full age and majority domiciled  
in Missouri City, Fort Bend County, State of Texas.

Plaintiff alleges acts of negligence against:

First Named Defendant, BODEGA LATINA CORPORATION D/B/A FIESTA  
MART, LLC. foreign corporation founded and incorporated in the State of California,  
USA authorized to do and doing business in Fort Bend County, State of Texas; and who is at all  
times responsible for the damages complained of herein; and thus pursuant to 28 U.S.C.,  
1332, there exist diversity of citizenship of the parties.

Federal Jurisdiction and Venue

BODEGA LATINA CORPORATION D/B/A FIESTA MART, LLC. made defendant herein and assumed all the liabilities, debts, and obligations of and owns and had care custody and control of the Fiesta Mart Store located at municipal address at 1530 Independence Blvd, Missouri City, Fort Bend County, State of Texas the location of the incident made basis of this lawsuit.

Additionally, the amount in controversy as to each party in this matter exceeds the jurisdictional limits of this Honorable Court of \$75,000.00.

This Honorable Court has subject matter jurisdiction over this claim which is within the territorial bounds of this Honorable Court.

Thus venue is Proper in the United States District Court for the Southern District of Texas, Houston Division.

#### **COUNT 1**

Plaintiff alleges premises liability against Defendant, BODEGA LATINA CORPORATION D/B/A FIESTA MART, LLC. Is a made Defendant and is liable unto plaintiff for a reasonable sum in the premises, together with legal interest thereon from date of judicial demand until paid, and for all costs of these proceedings for the following reasons to wit.

1.

On or about July 22, 2020 at 4:30 p.m. Plaintiff, KIMBERLINE JOHNSON was a lawful invitee and patron of the BODEGA LATINA CORPORATION D/B/A FIESTA MART, LLC. store located at 1530 Independence Blvd, Missouri City, Fort Bend County, State of Texas.

2.

While Plaintiff, KIMBERLINE JOHNSON was walking towards the meat section in the Fiesta Mart Store and as she turned into aisle suddenly unexpectedly and without warning

her shin struck a foot stool left protruding into the store aisle left there by a employees, and acting within the course and scope of employment, and who were using it to reach the top of the shelf store and causing her to trip and fell hard to the floor and causing serious injury to her person.

3.

Plaintiff, Kimberline Johnson's trip and fall occurred because of employee(s) of defendant, BODEGA LATINA CORPORATION D/B/A FIESTA MART, LLC. failed to remove the foot stool which they left protruding into the store aisle which obstructed the aisle walkway causing an unreasonably dangerous condition to lawful invitees, patrons and customers like plaintiff.

4.

Defendant, BODEGA LATINA CORPORATION D/B/A FIESTA MART, LLC. owed a duty of reasonable care to its patrons and invitees at the Fiesta Mart Store located 1530 Independence Blvd, Missouri City, Fort Bend County, State of Texas and was aware of plaintiff's presence as a patron and a lawful invitee.

5.

Defendant owed Plaintiff the duty of reasonable care. Defendant knew or should have known that failing to remove the employee footstool from the end of the aisle created a dangerous condition for customers, invitees and patrons.

6.

Defendant, BODEGA LATINA CORPORATION D/B/A FIESTA MART, LLC. duty of reasonable care was breached when they failed to foresee the danger posed to customers, invitees and patrons in failing to remove the employee footstool from the end of the aisle.

7.

The subject employee footstool at the end of the aisle was placed there knowingly by defendant's employees and constituting failure on the part of Defendant, BODEGA LATINA CORPORATION D/B/A FIESTA MART, LLC. to act with ordinary care under the theory of respondeat superior thereby making said defendant vicariously responsible.

8.

The aforementioned Defendant, BODEGA LATINA CORPORATION D/B/A FIESTA MART, LLC. and Defendant is liable for its own negligence for things in their care, custody and control; and for the negligent acts of its employees agents and representatives;

9.

Defendant, BODEGA LATINA CORPORATION D/B/A FIESTA MART, LLC. respectively, which were in full force and effect at the time of the aforementioned fall and are therefore liable under the terms of said policy for the injuries suffered by Petitioner.

10.

Defendant, BODEGA LATINA CORPORATION D/B/A FIESTA MART, LLC. is liable unto Petitioner for its own negligence, the negligence of its employees, which includes but is not limited to the following:

- a. Failure to take the necessary precautions to avoid the incident made the basis of this litigation even after they knew or should have known that failing to remove the employee footstool from the end of the aisle caused a hazardous conditions;
- b. Failure to make a timely installation of warning signs or postings informing invitees and patrons that a hazardous condition existed, the employee footstool at the end of the aisle which was not open and obvious to Plaintiff as they entered the aisle when gazing from a normal look out distance;

- c. Failure to take the necessary precautions to avoid the incident made the basis of this litigation even after they knew or should have known;
- d. Failure to make a timely installation of warning signs or postings informing invitees that a hazardous condition existed;
- e. Failure to exercise reasonable vigilance;
- f. Failure to properly train and educate employees;
- g. Negligent hiring of incompetent employees;
- h. Failure to maintain things in their care, custody, and control; and
- i. Any and all other acts of negligence which might be shown at the time of this trial.

**11.**

As a result of the aforementioned negligence, Plaintiff, KIMBERLINE JOHNSON slipped and fell and subsequent entrapment she has seriously injured her lower back, neck and knees requiring, along including cartilage damage, pain, and reduced mobility and may need invasive surgical procedures and experiences ongoing and enduring pain that will last a lifetime. These injuries were proximately caused by negligence of the Defendant in not exercising ordinary care toward a foreseeably dangerous condition resulting in extensive medical treatment and damages.

**12.**

Plaintiff KIMBERLINE JOHNSON is entitled to an amount in damages reasonably calculated to compensate him for injuries he sustained, including but not limited to;

- a. Past, Present and future loss of household services in the past and future.
- b. Past, present and future mental pain, suffering and anguish;
- c. Past, present and future physical pain and suffering and loss of function;
- d. Past, present and future medical expenses;

- e. Loss of enjoyment of life; and
- g. Any and all other damages cognizable by the Constitution of the State of Texas and the United States Constitution.

**13.**

Petitioner avers amicable demand to no avail.

**PRAYER FOR RELIEF**

**WHEREFORE**, Petitioner, Kimberline Johnson, prays that this Petition be filed and that Defendant, BODEGA LATINA CORPORATION D/B/A FIESTA MART, LLC. be duly cited and served with a copy of same, to appear and answer same and after all legal delays and due proceedings are had that there be judgment herein in favor of Petitioner, Kimberline Johnson, and against Defendant, BODEGA LATINA CORPORATION D/B/A FIESTA MART, LLC. in an amount reasonably calculated to compensate Petitioner for his damages, together with legal interest thereon, from date of judicial demand until paid and for all costs of the proceedings and all general and equitable relief this Honorable Court deem necessary.

Respectfully submitted,

DENNIS SPURLING PLLC  
**ATTORNEY AT LAW AND FRIENDS**

*/s/Dennis D. Spurling*

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**Please Serve:**

Bodega Latina Corporation  
D/B/A Fiesta Mart, LLC.

Through Its Agent for Service Of Process:  
Urs Agents, LLC  
3610-2 N. Josey Lane, Suite 223  
Carrollton, Texas 75007, USA